

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
November 05, 2009

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[CONFIRMATION]

The Committee on Business and Labor met at 9:00 a.m. on Thursday, November 5, 2009, in Room 2102 for the purpose of conducting a public hearing on gubernatorial appointments. Senators present: Steve Lathrop, Chairperson; Brenda Council, Vice Chairperson; Tom Carlson; Amanda McGill; Ken Schilz; and Norman Wallman. Senators absent: Tom White. []

SENATOR LATHROP: Good morning. We're here today in the Business and Labor Committee for the purpose of having confirmation hearings on gubernatorial appointments. We have two today: Robert Kirkpatrick and Kurt Eberspacher. I probably tortured that name. Sorry about that. We'll start with Mr. Kirkpatrick, if you'd like to come forward. [CONFIRMATION]  
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ROBERT KIRKPATRICK: Good morning. [CONFIRMATION]

SENATOR LATHROP: Good morning and welcome to the committee. And again, my apologies for being a little bit late. I had gas issues, so. And those having been resolved and me having gotten here five minutes late instead of two hours late...  
[CONFIRMATION]

SENATOR CARLSON: Did you say cash or gas? [CONFIRMATION]

SENATOR LATHROP: Gas. So with that, we'll hear from Mr. Kirkpatrick. Good morning.  
[CONFIRMATION]

ROBERT KIRKPATRICK: Good morning. I'm not sure what I'm supposed to...I am just glad to be appointed to the Boiler Safety Board for Nebraska. I've been around the boiler business for almost 35 years; 25 of it going here in Lincoln, Nebraska, working with Nebraska Boiler. I have also served on the traction engine committee for the national board, the NBIC code; been the quality manager and service rep for Nebraska Boiler. Like I said, it will be 25 years this coming February I've been at Nebraska Boiler.  
[CONFIRMATION]

SENATOR LATHROP: Is this a reappointment for you, or your first time?  
[CONFIRMATION]

ROBERT KIRKPATRICK: First time. [CONFIRMATION]

SENATOR LATHROP: Okay. Can you tell us a little bit about what you understand the job to involve? [CONFIRMATION]

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ROBERT KIRKPATRICK: To my understanding, this job involves looking at the restrictions or the requirements for the safety part of the units in the field, all around the state of Nebraska. In other words, if people have problems or if they have questions, they would be directed to the advisory board to look at to see if it's feasible or correct and safe for them to be operating these units for different...whether it's Section 1, Section 8 of the code, a repair. And that's mainly...like I said, I've been to one meeting, but I'm looking forward to digging into it more. [CONFIRMATION]

SENATOR LATHROP: Very good. Anybody have any questions for Mr. Kirkpatrick? I think you stand a good chance. [CONFIRMATION]

ROBERT KIRKPATRICK: Well, I'm looking forward to it, to be honest with you. [CONFIRMATION]

SENATOR LATHROP: Yeah, we appreciate, you know...Senator Carlson. [CONFIRMATION]

SENATOR CARLSON: Senator Lathrop, see, you asked him if this is a reappointment. I just got through asking him, because he looks like he's been around, and that's why... [CONFIRMATION]

SENATOR LATHROP: Exactly. [CONFIRMATION]

ROBERT KIRKPATRICK: Well, I have been. But like I said, I've... [CONFIRMATION]

SENATOR LATHROP: Well, and we do...you know, as people that are in the Legislature and providing, we think, a service to the state by being senators, we appreciate what other people do when they step forward, serve on these boards and serve their state in that capacity. So thank you for volunteering. [CONFIRMATION]

ROBERT KIRKPATRICK: Well, I appreciate what all you folks do, everything too. I mean I really am looking forward to serving Nebraska on this board. [CONFIRMATION]

SENATOR LATHROP: Good. We appreciate your contribution. Thank you. [CONFIRMATION]

ROBERT KIRKPATRICK: Thank you. [CONFIRMATION]

SENATOR LATHROP: Mr. Eberspacher. We'll have you start out with your name because I'm probably torturing it. [CONFIRMATION]

KURT EBERSPACHER: It's Kurt Eberspacher. [CONFIRMATION]

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SENATOR LATHROP: Eberspacher. Okay. Why don't you spell that for us so that the record reflects. [CONFIRMATION]

KURT EBERSPACHER: Last name is E-b-e-r-s-p-a-c-h-e-r. [CONFIRMATION]

SENATOR LATHROP: Okay. Welcome to the Business and Labor Committee. [CONFIRMATION]

KURT EBERSPACHER: Thank you. I guess... [CONFIRMATION]

SENATOR LATHROP: Do you have any remarks for us today? [CONFIRMATION]

KURT EBERSPACHER: A little bit about myself. I have only been in the business probably 20-21 years. I have an associate degree in nondestructive testing from Southeast Community College in Milford, where that actually took me down into the southern part of the United States in the pulp and paper mill industry. Came back to Nebraska. Home roots are here. Finally finished up a four-year degree out at Seward, Concordia College. Was hired on with the Department of Labor Division of Safety as a deputy boiler inspector, back in '95 I believe. Worked for the state approximately 8.5, 9 years, as a deputy. Worked with the chiefs of Nebraska, doing the rules and regs, doing the inspections, kind of a daily task of that. Attending some of the board meetings in the past. I had an opportunity to advance my career, and I went to Chubb Insurance and I cover all of Nebraska and part of Iowa now as a boiler machinery risk consultant for them. So I'm still looking at boilers. I do surveys. I do infrared scans. And had the opportunity to come on with the board and apply for the position. I just would like to stay up on it and help further the program. And since I've been kind of associated with the program for quite a number of years, I'd like to help keep it going in a positive direction. [CONFIRMATION]

SENATOR LATHROP: Okay. Very good. Senator Council. [CONFIRMATION]

SENATOR COUNCIL: Yes, thanks a lot, Mr. Eberspacher. I was close. I was the one that pronounced it "E-ber." So you were talking about your current employment and it's regional, so do you work out of your home or an office in Omaha? I was just concerned about the fact that your business address is Des Moines. And I just...you know, do you...? [CONFIRMATION]

KURT EBERSPACHER: I actually live just north of town in Lincoln here. My first office is in West Des Moines, Iowa; corporate is in New Jersey. Been there once in six years. I try to get in to my office in Des Moines about once every 4-5 weeks. Otherwise, I work... [CONFIRMATION]

SENATOR COUNCIL: You work straight out of here. [CONFIRMATION]

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KURT EBERSPACHER: Straight out of my home. I mean, I'm totally remote that way. Yes. [CONFIRMATION]

SENATOR COUNCIL: Okay. All right. [CONFIRMATION]

SENATOR LATHROP: Any other questions? Senator Carlson. [CONFIRMATION]

SENATOR CARLSON: Senator Lathrop. It looks like with your current employment and what you do, is it safe to say that in working for Chubb Insurance and solving problems for the people that you cover, you're interested in doing it in a manner that obviously takes care of safety but doesn't necessarily cost an arm and a leg? [CONFIRMATION]

KURT EBERSPACHER: Right. I try and use common sense, whether we're insuring it or not. I'm looking at keeping the program in the positive direction. Back in '95, Dan Burns was the chief. He helped this program, I think, tremendously, and got it back on the right path, and I was lucky to be part of that and I'd like to keep that going, where we're going. Being on the insurance side, that's one hat and this is going to be the other hat. I'm looking at the whole picture, you know, for not just the people of Nebraska, but when I work in Iowa I'm very active in attending their boiler board meetings, staying up on their rules and regs, seeing what they're doing also over there. [CONFIRMATION]

SENATOR CARLSON: Okay. Thank you. [CONFIRMATION]

SENATOR LATHROP: Senator Council. [CONFIRMATION]

SENATOR COUNCIL: I apologize. I guess Senator Carlson's question gives rise to I guess one other question. Do you foresee any possibility that there would be a conflict of interest between what your employer, Chubb Insurance, would want to see in terms of boiler safety regulations and what may come before the Boiler Safety Board? [CONFIRMATION]

KURT EBERSPACHER: I do not. What Chubb does is pretty much they recognize the rules and regs and the administrative code as their guidelines. That's our minimum that we have to follow. Things that would exceed that are very limited. It would be an unique situation that something like that would I guess take place. If that would, then I'd have to, you know, visit with Chris Cantrell, the current chief of Nebraska: This is what we've got going on; how do you want to handle it? Plus then I'd have to talk to my managers and stuff. But I don't see no conflict. [CONFIRMATION]

SENATOR COUNCIL: Okay. Because what I'm thinking of--and I don't know whether it is probable or not probable--there's a recommendation before the Boiler Safety Board to change a particular regulation and if that regulation were changed it might have some

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impact on how Chubb issues insurance. And I was just wondering if you foresaw any possibilities of that existing and how would you handle it if it did? [CONFIRMATION]

KURT EBERSPACHER: I think there's a chance. It would not only be for the Chubb Insurance side of it, but it would also be for the insurance industry world...or nation...or basically statewide, who writes the boiler insurance in this state. They might have to make some adjustments to their policies. As far as coverage, I don't do any...I don't get into the policy end or the writing of premiums or things like that. My goal is basically the safety out there and to keep things safe for our clients. [CONFIRMATION]

SENATOR COUNCIL: Thank you. [CONFIRMATION]

SENATOR LATHROP: I did have a question, as long as you're here, because we are the Business and Labor Committee and for some reason they give us elevators and boilers. And we don't really...I don't know that much about it other than the big risk with boilers is carbon monoxide leaks, isn't it? Getting a crack in a boiler and then... [CONFIRMATION]

KURT EBERSPACHER: That's one thing on the fire side. Your big thing is basically boiler explosions where you actually have a crack in the metal. And if the water leaks into the fire side, steam expands about 1,500 times per square inch, so when that lets go there's going to be a lot of weak spots and it's going to let go. And my job currently and when I was with the state is to try to identify those issues before a catastrophe happens. [CONFIRMATION]

SENATOR LATHROP: Do you see...you know, as you approach this position, do you come to it with any ideas of regulations that need to be changed, tightened? Or do you feel like the regulations that we have that guide the inspections are adequate at this point in time? [CONFIRMATION]

KURT EBERSPACHER: I think they're adequate. As I mentioned earlier, when Dan Burns was chief I was...he would throw things back and forth to me to see if this sounds right. We kind of tweak them. They're pretty close. Iowa and Nebraska, Kansas, they're all very similar to their rules and regs. It's just this state has a little different aspect. This state has a little bit...but they use the same codes, the same guidelines to set those basics. Now they might be a little more stringent on one side than the other state. For an example, on your steam autoclaves or steam sterilizers in hospitals, Nebraska does not require to inspect those underneath their current boiler pressure vessel law. The state of Iowa does. You make that adaptation when you go. Do I see that for a need in Nebraska? No, because when you're dealing in the healthcare and surgical rooms, it's very hard to schedule those because you're dealing with surgery, you're dealing with service reps. Everything has to come together and it's pretty tough. We do it but it takes time to get everybody on the same page. [CONFIRMATION]

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SENATOR LATHROP: The one thing that we have heard in this committee is that there is some difficulty keeping, hiring, and retaining boiler inspectors for this state. Is that the case? [CONFIRMATION]

KURT EBERSPACHER: Yes. [CONFIRMATION]

SENATOR LATHROP: Do you want to give us just a little bit of background? As long as we have you here, we can get a little information that might serve us at a different time. [CONFIRMATION]

KURT EBERSPACHER: Okay. Ever since I came on board in about '95, the state has been basically a training ground. You come in, the state will train you. And basically get your National Board commission, and after that maybe work a year, maybe two years. The insurance industry is, oh, I wouldn't say if it is 25 percent higher in salaries or what, but most of the time it's money-driven or salary-driven, and people leave. In the state of Nebraska, you are actually part of enforcement because you do have a law to follow. In the insurance side, it's a little bit different. We have more recommendations and we use the state to back us up on that because it's part of the rules and regs. So there are some differences. The majority of it, I know that the state here has kind of a revolving door in that area. Some people don't like the pressure in dealing with customers and contractors every time, but you've got to be very stern and just this is the way it is. And it's a give and take. But until I believe the salaries come up to kind of industrywide, until then I don't think the state will be able to maintain it. I think Chief Burns and myself were the two longest tenured people in the last...since probably the early '80s. And we both had about nine years. [CONFIRMATION]

SENATOR LATHROP: Do we have adequate numbers now? [CONFIRMATION]

KURT EBERSPACHER: In my opinion, no. [CONFIRMATION]

SENATOR LATHROP: How many do we have and how many should we have, do you think? [CONFIRMATION]

KURT EBERSPACHER: You have one chief boiler inspector and one deputy currently. [CONFIRMATION]

SENATOR LATHROP: Well, that isn't very many. How many boilers are they inspecting? [CONFIRMATION]

KURT EBERSPACHER: Totally, on the books, there's probably over 10,000 that are looked at, between the state of Nebraska and the insurance industry. [CONFIRMATION]

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SENATOR LATHROP: So is the state effectively delegating that to the insurance industry, and saying, if you're going to insure it, go out and look at it and let us know if it's problematic? [CONFIRMATION]

KURT EBERSPACHER: The way that works is if you write the boiler machinery policy--and all states are like this--they give you the opportunity to go in and basically do that inspection. We send the reports in to the state of Nebraska. They issue the state certificates for the certificate fee. If the companies do not elect to have boiler insurance, some good ones are like your dry cleaners, for an example. Most of them feel they cannot afford the boiler coverage. So then the state looks at all the noninsured boilers. So their resources are basically looking at the noninsured accounts, and then they also have the responsibility now of looking at all initial boiler inspections; doing the first inspections and assigned the state number. Now the state of Nebraska just switched boiler programs to it's called a Praeses or a JOL system from Focus. I need to visit with the chief on that a little bit. I picked up a few new boilers yesterday, as a matter of fact. I cannot enter those boilers because currently we are not allowed to issue new state numbers. So, okay, how am I going to enter that report? I have no idea yet, without...the program came on board the October 29, last Thursday, I believe is when they went live with their new program. I know the girls or the secretaries and the staff down there good enough I call them daily, so we'll work that out. That's kind of an issue because with two people doing your initial inspections, plus their daily Q&A's for customers, I mean they're running hard. I mean... [CONFIRMATION]

SENATOR LATHROP: How often are they supposed to be inspected?  
[CONFIRMATION]

KURT EBERSPACHER: It depends on the boiler. Your high pressure boilers are once a year...well, actually they're twice a year now. You have one in-service and one internal...  
[CONFIRMATION]

SENATOR LATHROP: There's no way that's happening though, is it?  
[CONFIRMATION]

KURT EBERSPACHER: I don't believe so on the state side. [CONFIRMATION]

SENATOR LATHROP: How many people do we need, do you know?  
[CONFIRMATION]

KURT EBERSPACHER: When I was on staff and we had three deputy boiler inspectors and one chief and two staff assistants in the office, and that was...we had a pretty good staff going. So you're, I would say, roughly about two short. And that would, I guess, be very tough to acquire any more people because the state's, and don't quote me on this,

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is probably around the \$45,000 mark for a salary, depending on experience when you hire them. [CONFIRMATION]

SENATOR LATHROP: So what we have to do is go find somebody that isn't making \$45,000. We train them and they make \$45,000, and then the insurance company calls them up and they leave. [CONFIRMATION]

KURT EBERSPACHER: They'll come in about...well, yeah, they'll come in for about \$65,000, and that's low on the insurance side. When I left the state, I was making about \$40,000. I went right up to \$55,000. [CONFIRMATION]

SENATOR LATHROP: Okay. Senator Carlson. [CONFIRMATION]

SENATOR CARLSON: Senator Lathrop. We can research this but I don't know it, so if you know it, it makes it...we'll cut the corners here. Is there a boiler...? Certainly there would be an initial boiler fee, I suppose, paid to the state. Is that an annual fee or is there something like that? [CONFIRMATION]

KURT EBERSPACHER: Yes, there is. [CONFIRMATION]

SENATOR CARLSON: What is it? [CONFIRMATION]

KURT EBERSPACHER: It depends on the size of the unit currently. It is set up...and I can't quote it right off the top of my head. When the state looks at a boiler, they have an inspection fee, and that's dependent on the size of the boiler. They also have the state certificate fee which I do know is \$36. It went, oh, approximately two or three years ago, from \$30 up to \$36. One reason for that was it is divisible by 12. So let's say if you have a boiler that is inspected in June and your customer wants to have it expire in, say, January, you'll get first a six-month certificate for that cost for, what, \$18. And then your annual certificate starts there. The in-service inspection on your high pressure boilers is informational inspection only. There is no charge on that from the insurance side. Now whether the state is actually charging an inspection fee, I don't believe they are because they already have a current certificate that is good for one year. Your low pressure boilers, hot water heaters, any pressure vessels that might fall underneath the current rules and regs, it's a one-time inspection. But the state does...not like for the insurance side, part of our insurance covers the inspection fee. We still send in the report to the state of Nebraska. They send out an invoice for the certificate fee only which would be \$36. So there's a little difference on where basically the funds come for the program. If the state does it, then they're actually getting an inspection fee. But where they're very limited right now, you know, the state, when I was there, was looking at about 1,400 to 1,500 boilers out of the...so, you know, around the 10,000 units that is currently and active on the books. The insurance companies pick up the rest. [CONFIRMATION]

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SENATOR CARLSON: But now it's 10,000. [CONFIRMATION]

KURT EBERSPACHER: Well, it's still about 10,000 total boilers, because you've got new boilers coming on, but the state...let's say if ABC Building put in four new boilers, and we insured them, I would still go in and do the initial inspection for my insurance side. But the state would have to come in and do the initial inspection and assign the state numbers. [CONFIRMATION]

SENATOR CARLSON: But that \$36, is that paid annually... [CONFIRMATION]

KURT EBERSPACHER: Yes. [CONFIRMATION]

SENATOR CARLSON: ...on all 10,000? [CONFIRMATION]

KURT EBERSPACHER: Yes. [CONFIRMATION]

SENATOR CARLSON: Okay. [CONFIRMATION]

KURT EBERSPACHER: Per unit that is inspected. [CONFIRMATION]

SENATOR CARLSON: Okay. [CONFIRMATION]

SENATOR LATHROP: Well, then we don't get 10,000 times \$36, because we don't get around to all 10,000 units, right? [CONFIRMATION]

KURT EBERSPACHER: No. That would be the certificate... [CONFIRMATION]

SENATOR LATHROP: Do we have a cash account... [CONFIRMATION]

KURT EBERSPACHER: ...only. That would be the revenue from the operating certificate only. That does not include your inspection fees. [CONFIRMATION]

SENATOR LATHROP: So we're making a little bit of cash off this--the state. Is it all going into a cash fund somewhere? [CONFIRMATION]

KURT EBERSPACHER: It is all going into a...it's not the general fund. They have a separate fund, going in, that... [CONFIRMATION]

SENATOR LATHROP: Right. What we call a cash fund. So now you're going on this board. Are you responsible, as a board member, for this issue of we need more inspectors? [CONFIRMATION]

KURT EBERSPACHER: If it is brought up to us. I think we pretty much, even Mr.

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Kirkpatrick, they know there's a shortage of boiler inspectors. We can make the recommendation and try and move it forward. [CONFIRMATION]

SENATOR LATHROP: But who is running the show if you aren't? [CONFIRMATION]

KURT EBERSPACHER: It would be the president of the board. We can make recommendations. The chief sits in on it, then we propose our findings to this board to move up. The way... [CONFIRMATION]

SENATOR LATHROP: But if we have 10,000 boilers to inspect, and I don't know how many you can get done in a year, but two guys plus their administrative responsibilities aren't going to get but a fraction of that, right? [CONFIRMATION]

KURT EBERSPACHER: Right. [CONFIRMATION]

SENATOR LATHROP: And so what we've done is said, well, we'll just do the ones that people decided not to insure because we know that there hasn't been at least an insurance company guy out there. My question is, do we have the "Help Wanted" sign out all the time? [CONFIRMATION]

KURT EBERSPACHER: They just filled a position about six weeks ago. I believe he still is in a little bit of training on that. [CONFIRMATION]

SENATOR LATHROP: Okay. Well, I guess that's a little concerning. But do you think, generally, the boilers in Nebraska are safe, given that we don't have the number of inspectors we probably should have in the field? [CONFIRMATION]

KURT EBERSPACHER: Overall. I mean, it's some common sense how they're...I look...20 years ago I'd say no. There were a lot of issues out there, a lot of code violations per the rules and regs. Over the years, we have slowly maintained and built the controls to a more safe issue. You're always going to have a few people that try and go behind the doors, don't get it inspected even by their city plumber, things like that. Back in, what, early 2000, there was somebody that installed a water heater in, was it Norfolk or Columbus, improperly. I know one lady passed away; the other one was in very critical condition from carbon monoxide. They just didn't do the ventilation properly. [CONFIRMATION]

SENATOR LATHROP: Never got inspected. [CONFIRMATION]

KURT EBERSPACHER: Never got inspected. I mean, the city inspector bought off on his friend being able to do it correctly, which was never done. It was kind of dropped. And that's about the same time the water heater issue in the state was being debated, from going down. We were at 150,000 B.T.U. input to 200,000 B.T.U. input. And they've

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moved up back up, so there's a lot of things that got exempt. Revenues were lost. Probably over 1,000, 1,500 water heaters were lost. [CONFIRMATION]

SENATOR LATHROP: When you get to this board, as I expect you will, and if you need some help from us with some program that will get you more of these inspectors, I...where do they come from? Milford, generally? Are we taking guys out of trade schools and making them inspectors? Are we taking them off the street from jobs that--you know, Home Depot? [CONFIRMATION]

KURT EBERSPACHER: No, because you need...the way the current rules are written, you need at least ten years' experience to even apply for the position. And I think that got moved back to five years. But you need some type of experience, whether it be inspecting, installing, maintaining operations. You need to be into that field. Where the pool used to come from is from the Navy, from the boiler techs. As everybody knows, that field, they pretty much went to nuclear. The boiler techs are either retired, they're passing away. They are just...they don't make no more. [CONFIRMATION]

SENATOR LATHROP: Is that too stringent, a requirement of ten years? And is that by statute or by one of your regulations? [CONFIRMATION]

KURT EBERSPACHER: I want to say by statute. [CONFIRMATION]

SENATOR LATHROP: Well, if you need any help with that or you have ideas or thoughts that might allow us to bring more people on to make sure the inspections are being done that need to be done, let us know. We'll do what we can as a committee. [CONFIRMATION]

KURT EBERSPACHER: Okay. I mean, for example, the state of Iowa, they have three deputies plus one chief to cover the state of Iowa. And they have appeared to be doing pretty good. Sometimes...I mean, they get in your way, but that's... [CONFIRMATION]

SENATOR LATHROP: Okay. [CONFIRMATION]

SENATOR CARLSON: Senator Lathrop, thank you. Iowa probably has more boilers. [CONFIRMATION]

KURT EBERSPACHER: They have a pressure vessel law that is more stringent than Nebraska, and on their water heaters they go down to 50,000 B.T.U. instead of 200,000. Yes. As far as that way, yes. [CONFIRMATION]

SENATOR CARLSON: They would have more to inspect than what we do. [CONFIRMATION]

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KURT EBERSPACHER: Probably overall, because they look at more objects currently than what the state of...as far as their rules and regs are written. [CONFIRMATION]

SENATOR CARLSON: Okay. Thank you. [CONFIRMATION]

SENATOR LATHROP: Any other questions? I don't see any. Thanks for coming down. We appreciate it. And again we appreciate your service. [CONFIRMATION]

KURT EBERSPACHER: And hopefully everything goes through, and if you ever have any questions feel free to let me know and I'll answer anything I can. [CONFIRMATION]

SENATOR LATHROP: We'll do that. [CONFIRMATION]

KURT EBERSPACHER: Okay, thank you. [CONFIRMATION]

SENATOR LATHROP: Thank you. [CONFIRMATION]

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Chairperson

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Committee Clerk